



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 592 OF 2024

Sandeep s/o. Dewanand Kamble,
Aged about 32 years,
Occupation : Labour,
R/o. Barbadi, Tah. and District – Wardha.

... APPELLANT
(Accused No.1)
(In Jail)

...VERSUS...

State of Maharashtra,
Through Police Station Officer,
Police Station, Sewagram,
Tah. and District – Wardha.

... RESPONDENT

Mr. R. M. Patwardhan, Advocate for Appellant.
Ms S. S. Dhote, A.P.P. for Respondent/State.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 20.02.2026
JUDGMENT PRONOUNCED ON : 06.04.2026.

JUDGMENT :

1. This is an Appeal under Section 415 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') against the
Judgment and Order dated 04.07.2024 passed by the learned
Sessions Judge, Wardha in Sessions Case No.45/2017 convicting and
sentencing the Appellant as follows :

*“1) Accused No.1 Sandeep Dewanand Kamble is
convicted under Section 235(2) of Cr.P.C. for offence
punishable under section 304 (Part I) of Indian Penal
Code and he is sentenced to undergo rigorous*

*imprisonment for a term of **10 years** and to pay fine of **Rs.5,000/- (Rupees Five Thousand Only)**, in default of payment of fine, he shall undergo simple imprisonment for **1 month**.*

- 2) Bail bonds of accused No.1 Sandeep Devanand Kamble is surrendered.*
- 3) Accused No.1 Sandeep Dewanand Kamble is entitled for set off as per Section 428 of Cr.P.C. against substantive sentence, for the period he has already undergone during the investigation, inquiry or trial of this case.*
- 4) **Accused No.2 Purushottam Digambar Wavare** is acquitted of the charge for offence punishable under Section 302 or any other offence of Indian Penal Code in this crime.*
- 5) Bail bond of accused No.2 stands cancelled.*
- 6) Accused No.2 Purushottam shall furnish P R. bond of Rs.15,000/- in view of Section 437-A of the Code of Criminal Procedure.*
- 7) Muddemal knife at Sr.No.14 as per list Exh.18 be sent to the District Magistrate, Wardha for disposal according to law, after appeal period is over.*
- 8) Muddemal one black colour cell phone of Nokia company X202 having two sims of airtel and one white colour cell phone of Samsung company (DUOS) and at Sr.No.18 and 22 with list Exh.18, seized from the father Devanand Kamble of accused No.1 be returned to him, if not claimed then be sold in public auction and sale proceed be credited to Government, after appeal period is over.*
- 9) Muddemal one black colour cell phone of Max company mode No.MX103 having sim of airtel and charge of videocon company at Sr.No.19 with list Exh.18, seized from accused No.2 Purushottam be*

returned to him, if not claimed, then sold in public auction and sale proceed be credited to Government, after appeal period is over.

- 10) Muddemal articles at Sr.Nos. 1 to 13, 15 to 17, 20 & 21 as per list Exh.18, being worthless, shall be destroyed after expiry of appeal period.*
- 11) Muddemal article three wheeler auto of black colour, registration No. MH-32/G-8437 is handed over to its owner on supratnama vide order dt.10.02.2017 in OMC No.29/2017, it shall be with its owner and supratnama stands confirmed.*
- 12) Copy of judgment be given to the accused No.1 Sandeep Kamble free of cost.”*

2. The prosecution's case as revealed from the police report is as under :

a] The Informant, who was the resident of village Barbadi, District Wardha was running pan shop in the village. He keeps his pan shop closed in the afternoon hours. On 16.01.2017, around 3.00 p.m. he came out of his house just to while the time. He came near the school in the village. Some of the villagers were playing the cards. His cousin brother Surendra Pandurang Moharle (deceased), the Appellant and other villagers were watching the game of the cards. After waiting there for some time, he went to the nearby pan shop of Kiran Wandhare and asked him to prepare kharra (tobacco mixture) for him. At about 03.45 hours, he heard the quarrel between the deceased and the Appellant and noticed that, the

villagers were running helter-skelter. He went to the said place and saw that, the acquitted accused Purushottam had caught hold the deceased and the Appellant dealt blows with the knife on the stomach and chest of the deceased. The deceased got injured and fell down. The Appellant and the acquitted accused left the spot in the auto-rickshaw of the acquitted accused. The Informant, Amol Thakare and other villagers removed the deceased to the Sewagram Hospital. On examination, the doctor declared the deceased dead. The Informant came back to the village and, thereafter, lodged the report with Sewagram Police Station and Crime bearing No.0038/2017 came to be registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

b] Inquest was done. The body was referred to the postmortem. The Spot Panchanama was prepared. The Appellant and the acquitted accused came to be arrested. The statements of the witnesses were recorded. At the instance of the Appellant, the knife and his blood stained clothes came to be seized. The seized articles were sent to the Chemical Laboratory. The relevant documents were collected. After completion of the investigation, the Appellant and the acquitted accused came to be chargesheeted.

3. The learned Trial Court framed the Charge against the Appellant and the acquitted co-accused for the offence punishable under Section 302 read with Section 34 of the IPC, to which both of them pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined the following witnesses :

- i] Rahul M. Dhage, Panch Witness is examined as PW-1,
- ii] Anil L. Moharle, the Informant, who witnessed the incident is examined as PW-2,
- iii] Amol R. Thakare, who removed the deceased to the Hospital is examined as PW-3,
- iv] Vishu B. Parteki, the witness is examined as PW-4,
- v] Vivek B. Das, the witness is examined as PW-5,
- vi] Ashish N. Bhatkar, Panch Witness is examined as PW-6,
- vii] Asha P. Wandhare, the witness is examined as PW-7.
- viii] Abhishek D. Dhabare, the witness is examined as PW-8,
- ix] Dr. Snehal D. Thombare, who examined the Appellant is examined as PW-9,
- x] Dr. Ranjan S. Ambedkar, who conducted the postmortem is examined as PW-10.
- xi] Prakash R. Masram, the Police Constable, who carried muddemal to the laboratory is examined as PW-11.
- xii] Praful R. Patil, the policeman, who carried muddemal to the Laboratory is examined as PW-12,
- xiii] Prabhakar F. Bhalme is examined as PW-13,
- xiv] Ambadas U. Sao, Panch Witness is examined as PW-14
- xv] Madhav Padile, Investigating Officer is examined as PW-15,

xvi] Pramila B. Bhalshankar, Woman Police Constable, who registered the crime is examined as PW-16.

The relevant documents are brought on record in the evidence of these witnesses.

d] After the prosecution filed the evidence closure pursis, the statement of the Appellant and of the acquitted co-accused came to be recorded under Section 313 (1)(b) of the Cr.P.C. They stated that, they were falsely implicated. Appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order, convicting the Appellant as above and acquitting the co-accused.

4. Heard the learned Advocate for the Appellant and the learned A.P.P. for the State. Scrutinized the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, no independent witness was examined by the prosecution though the incident took place in the broad day light at public place. The only eye witness was the Informant, who was the cousin brother of the deceased and interested witness. The evidence on record goes to show that, at the time of the incident, he was at the pan stall, which was at a distance from the spot of incident. The prosecution suppressed the genesis of the matter. The injuries on the hand of the Appellant are not explained by the prosecution. The First Information Report was lodged after a period of six (6) hours. The discovery and

seizure of the knife was from the open place at a distance of five (5) kilometers from the place of occurrence. Most of the witnesses did not support the case of the prosecution. The conviction cannot be based on his sole testimony. The blood grouping was not done and, therefore, the reports from the Chemical Analyser (C.A.) were not of any help to the prosecution. Hence, the Appellant is entitled for acquittal. In support of his submissions, he relied on the Judgment of *Prakash Moglaji Sonawane & Ors. Vs. State of Maharashtra, [2002 ALL MR (Cri) 324]*, wherein it is observed that, the evidence of the interested witnesses is required to be evaluated with caution and failure of the prosecution to explain the injuries on the accused leads to the inference that, the prosecution suppressed the genesis of the incident.

b] It is submitted by the learned A.P.P. that, the Informant is the cousin of the deceased. His evidence shows that, he witnessed the incident. The First Information Report was lodged on the very day of the incident. The incident was the result of quarrel. The knowledge was sufficient and no intention was required. The blood stained clothes and knife was seized at the instance of the Appellant. The C.A. report and the D.N.A. report shows the blood. The Medical Officer proved the injuries on the Appellant. The carrier of the

articles is examined. The evidence on record proved the assault by the Appellant on the deceased. Hence, the Appeal be dismissed.

5. The charge, which was framed against the Appellant and the acquitted accused was for the offence of murder punishable under Section 302 of the IPC. The co-accused came to be acquitted and the Appellant is convicted for the lesser offence punishable under Section 304 (Part-I) of the IPC. The prosecution's case is based on the testimony of sole eye witness. He is examined as PW-2. Undisputedly, he is the Informant and the cousin brother of the deceased. Merely because he is related to the deceased, his evidence cannot be discarded. However, as observed in the above referred decision, his evidence is required to be evaluated with care and caution. He deposed that, he knew the Appellant as he was the resident of his village. The incident occurred on 16.01.2017. Some villagers were playing the cards in front of the school near the Panchayat Samitee. He waited there for some time and left and came to the pan shop of Kiran Wandhare. He asked Kiran Wandhare to prepare Kharra (Tobacco preparation) for him. The dispute was going on between the Appellant and the deceased and the people started running helter-skelter. He saw that, the Appellant removed the knife and dealt 3 to 4 blows on the stomach of the deceased. The deceased fell down. He tied the handkerchief to the wound of the deceased. PW-3

Amol Thakare tied his T-shirt to the wound of the deceased. The Appellant left. The deceased was shifted to the Hospital by him, PW-3 Amol and others. Doctor declared the deceased dead. The Doctor asked them to leave the Hospital and they will inform the police. Therefore, he returned and went to the Police Station and lodged the report below Exhibit-54 and the First Information Report below Exhibit-55 came to be registered. The statement was recorded before the learned Magistrate. He identified Articles 18/14.

6. PW-3 Amol Thakare deposed that, the deceased was the cousin brother of the Informant. On the day of incident at about 03.45 p.m., he was in his house. He heard the chaos and came to know that, murder took place at the square. He reached the spot of incident. The deceased was found injured. He tied his T-shirt to the wound of the deceased. The deceased was taken to the Hospital. The deceased succumbed to the injuries on the way to Hospital. He did not know as to how the deceased suffered the injuries.

7. The cross-examination of PW-2 Informant shows that, there were 30 to 40 people at the spot of incident and there was chaos and at the time of the incident, the villagers ran helter-skelter. The cross-examination of PW-3 Amol Thakare shows that, after he reached the spot of incident, PW-2 Informant came there. The evidence of PW-2 Informant shows that, at the time of the incident,

he was at the pan shop of one Kiran Wandhare. Undisputedly, said Kiran Wandhare is not examined. The cross-examination of PW-15, Investigating Officer Madhav Padile shows that, there was no reference in the Spot Panchanama of the pan shop of Kiran Wandhare and he volunteered that, as the pan shop was at a distance, there was no reference of the same.

8. The above discussed evidence on record creates reasonable doubts on the testimony of PW-2 - Anil Moharle, the Informant that, he witnessed the incident. When it is clear from the above referred evidence on record that, the pan shop where PW-2 - Anil Moharle was standing was at a distance from the spot of incident, the villagers started running helter-skelter and PW-2 - Anil Moharle reached the spot after PW-3 - Amol Thakare reached, the evidence of PW-2 - Anil Moharle, is required to be seen with serious doubt. Except him, there is no other eye witness examined by the prosecution though the crime took place on broad day light at the public place. It is worth to note that, in para 5 of the Postmortem Report, the history given by the PW-2 Anil Moharle was that, the deceased was assaulted by "*someone*" with knife on 16.01.2017 at about 03.45 p.m..... It is not the case that, the Appellant was not known to the PW-2 – Anil Moharle. This history given by the

Informant himself, goes contrary his evidence and falsifies his evidence against the Appellant.

9. The evidence of PW-1 – Rahul M. Dhage shows that, on 17.01.2017, he went to the Sewagram Police Station where the Appellant stated that, he had hidden his clothes and knife and he will show the place and pursuant to the memorandum below Exhibit-46, the Appellant took the panchas and police team to a place near the Sewagram bus stop and removed the clothes and the knife, which were kept in one cement pipe. The said articles were seized under the Panchanama below Exhibit-47. His cross-examination shows that, the label on the knife did not bear his signature. PW-15 – Madhav Padile, the Investigating Officer deposed that, on 17.01.2017, the knife and the clothes were seized at the instance of the Appellant under the above referred memorandum and Seizure Panchanama. The evidence of the carrier shows that, he carried the articles to the laboratory for examination.

10. The C.A. Reports are brought on record. The C.A. Report below Exhibit-114 is in respect of blood of deceased showing the result of analysis as inconclusive. The C.A. Report at Exhibit-115 is in respect of the blood of the Appellant showing the result of analysis as blood group 'B'. The C.A. Report as Exhibit- 116 shows human blood on the clothes of the Appellant. The C.A. Report at Exhibit-112 shows

human blood on the knife (Exhibit-3). The D.N.A. Report at Exhibit – 121 shows blood of the deceased on the clothes of the deceased and the blood of the Appellant on the clothes of the Appellant and blood of the deceased and blood of the Appellant on the knife. With this scientific evidence, the discovery/recovery of the clothes of the Appellant will not be incriminating and not relevant. Only relevant will be the discovery/recovery of the knife.

11. The evidence of PW-9 Dr. Snehal D. Thombare shows that in January, 2017, she was attached to Government Hospital, Wardha as the Medical Officer and she examined the Appellant in Crime No.38/2017. She collected the samples of the Appellant and examined the Appellant. She found two (2) simple injuries in the nature of *[1] Lacerated wound over left hand between thumb and index finger of size 1.5 cm x 0.30 cm. and [2] Lacerated wound over right index finger laterally horizontally of size 1 cm x 0.30 cm. and the age was around more than 24 hours and the injuries were possible due to sharp and pointed object.* The arrest memo of the Appellant below Exhibit-105 shows accidental injuries and handicap in the right leg. The cross-examination of this Medical Officer shows that, she did not examined the weapon and the injuries could be self inflicted. The evidence of PW-8 Abhishek D. Dhabarde shows that, he knows the Appellant and 5 to 6 years before, the Appellant had come

to him on motorcycle in the evening and told him that, he met with the accident. In cross-examination, it has come that, the blood was seen on his clothes. This evidence is without any specific day, date and year and will not be relevant.

12. The above discussed evidence on record goes to show that, the only incriminating evidence against the Appellant is the discovery/recovery of the knife having his and the deceased blood stains and the simple injuries on his hand. The injuries being simple in nature, the prosecution is not duty bound to explain the injuries on the Appellant. In the light of settled legal position, this evidence by itself will not be sufficient to maintain the conviction. This incriminating evidence, at the most, would raise a suspicion against the Appellant and nothing more. The other evidence is that of the Police Officer, who recorded the crime, the Investigating Officer, the carrier of the muddemal, the Medical Officer, who performed the Postmortem, which show that they performed their duties. The evidence of PW-4, PW-5 shows that, they did not support the case of the prosecution. In the cross-examination done by the prosecution, nothing material has come so as to establish the charge. In the light of the above discussion, the Appellant is entitled for acquittal on the ground of benefit of doubt. Hence, the order :

ORDER

- i] The Appeal is allowed.
- ii] The conviction and sentence recorded by the learned Trial Court in Sessions case No.45/2017 vide Judgement and Order dated 04.07.2024 against the Appellants is quashed and set aside.
- iii] The Appellant is acquitted for the offence punishable under Section 304 (Part I) of the IPC.
- iv] The Appellant is behind bars. He be released, if not required in any other offence.
- v] The fine amount if paid by the Appellant be refunded.
- vi] The muddemal property be dealt with as per the operative order of the impugned Judgment.
- vii] Record and proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)